

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVID B. NEWMAN and IRA F/B/O DAVID
NEWMAN-PERSHING LLC as Custodian, on
behalf of themselves and all Others Similarly
Situated, and Derivatively on behalf of FM LOW
VOLATILITY FUND, L.P.,

Plaintiffs,

v.

FAMILY MANAGEMENT CORPORATION;
SEYMOUR W. ZISES; ANDREA L.
TESSLER; ANDOVER ASSOCIATES LLC I;
ANDOVER ASSOCIATES MANAGEMENT
CORP.; JOEL DANZIGER, HARRIS
MARKHOFF; IVY ASSET MANAGEMENT
CORP.; THE BANK OF NEW YORK
MELLON CORPORATION; MAXAM
ABSOLUTE RETURN FUND, LP; MAXAM
CAPITAL MANAGEMENT LLC; MAXAM
CAPITAL GP, LLC; and SANDRA MANZKE,

Defendants,

and FM LOW VOLATILITY FUND, L.P.,

Nominal Defendant.

1:08-cv-11215-LBS

FILED ELECTRONICALLY

**DECLARATION OF DEMET BASAR IN SUPPORT
OF PLAINTIFFS' MOTION TO ALTER OR AMEND THE JUDGMENT
AND FOR LEAVE TO AMEND THE COMPLAINT**

I, DEMET BASAR, declare as follows:

1. I am a partner at the law firm of Wolf Haldenstein Adler Freeman & Herz LLP, counsel for Plaintiffs David B. Newman and IRA F/B/O David Newman, Pershing LLC, as Custodian, of which David B. Newman is the owner (together, “Plaintiffs”) in this above-captioned action. I am admitted to practice law in the Southern District of New York.

2. I make this declaration in support of Plaintiffs’ Motion to Alter or Amend the Judgment and for Leave to Amend the Complaint (the “Motion”). I have personal knowledge of the facts set forth below.

3. Attached hereto as Exhibit A is a true and correct copy of the Opinion and Order, dated October 20, 2010 (the “Order”), which granted Defendants’ motion to dismiss the Plaintiffs’ Second Amended Class Action and Derivative Complaint (the “SAC”).

4. Attached hereto as Exhibit B is a true and correct copy of the Judgment, implementing the Order, which was signed and entered for the Clerk of the Court on October 20, 2010 (the “Judgment”),

5. Attached hereto as Exhibit C is the proposed Third Amended Class Action and Derivative Complaint (“TAC”).

6. Attached hereto as Exhibit D, for the Court’s convenience, is a black-lined version of the TAC, indicating the differences between it and the SAC.

7. Accordingly, I respectfully request that the Court add the aforementioned Exhibits to the existing record in the above-captioned litigation and be considered in support of granting the relief sought in the instant Motion.

I declare under penalty of perjury of the laws of the United States that the above information is, to the best of my knowledge, true and correct.

Executed this 17th day of November, 2010, in New York, New York.

/s/ Demet Basar

DEMET BASAR